

**UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY**

**QUESTIONNAIRE FOR JUDICIAL NOMINEES**

**PUBLIC**

1. **Name:** State full name (include any former names used).

Amanda Kathleen Brailsford  
Amanda Kathleen Felton

2. **Position:** State the position for which you have been nominated.

United States District Judge for the District of Idaho

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Idaho Court of Appeals  
451 West State Street  
Boise, Idaho 83720

4. **Birthplace:** State year and place of birth.

1967, Twin Falls, Idaho

5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1990 – 1993, University of Idaho College of Law; J.D. (*summa cum laude*), 1993

1985 – 1989, University of Idaho; B.A. (*cum laude*), 1989

6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2019 – present  
Idaho Court of Appeals  
451 West State Street  
Boise, Idaho 83720

Court of Appeals Judge

2013 – 2017; 2018

Andersen Schwartzman Woodward Brailsford, PLLC (now defunct)  
(formerly known as Andersen Banducci, PLLC)

101 South Capital Boulevard

Boise, Idaho 83702

Member (2013 – 2017)

Counsel (2018)

1995 – 2013; Summer 1992

Holland & Hart LLP

800 West Main Street, Suite 1750

Boise, Idaho 83702

Partner (2003 – 2013)

Associate (1995 – 2002)

Summer Associate (summer 1992)

1993 – 1995

U.S. Court of Appeals for the Ninth Circuit

550 West Fort Street, Suite 400

Boise, Idaho 83724

Law Clerk for the Honorable Thomas G. Nelson

1992 – 1993

University of Idaho

875 Perimeter Drive

Moscow, Idaho 83843

Judicial Advisor to Dean of Students

1991 – 1993

University of Idaho College of Law

875 Perimeter Drive

Moscow, Idaho 83844

Teaching Assistant

Summer 1991

University of Idaho College of Law

875 Perimeter Drive

Moscow, Idaho 83843

Research Assistant

Other Affiliations (uncompensated):

Flying Triangle, Inc.

18274 Highway 30

Hagerman, Idaho 83332  
Minority Shareholder, Director

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I did not serve in the military. I was not required to register with the selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Martindale Hubbell, AV Preeminent rating (2012 – present)

Litigation Counsel of America, Fellow (2017 – 2018)

Chambers USA, America's Leading Lawyers (2009 – 2017)

Leadership Boise (1998 – 1999)

University of Idaho College of Law

University of Idaho Alumni Award for Excellence (1993)

J. Blaine Anderson Memorial Scholarship (1992 – 1993)

University of Idaho

Outstanding Senior Award (1989)

Phi Beta Kappa (1989)

Phi Kappa Phi (1989)

Sigma Tau Delton (1989)

Grace V. Nixon Scholarship (1985 – 1988)

David Scholarship (1988 – 1989)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Federal Bar Association, Idaho Chapter

Founding Member (2004)

Nominating Committee, Chairman (2006)

Idaho State Bar Association (1993 – present)

Idaho Supreme Court Evidence Rules Advisory Committee (2016 – 2019)

Inns of Court, Boise Chapter (2000 – 2001)

University of Idaho College of Law Conclave (2006)

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Idaho, 1993

There have been no lapses in membership. I have been an inactive member on judicial status since my appointment to the Idaho Court of Appeals in 2019.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Appeals for the Ninth Circuit, 1993  
United States District Court for the District of Idaho, 1993

There have been no lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Law Advisory Council for University of Idaho College of Law  
Emeritus Member (2012 – present)  
Member (2007 – 2011)

Silver Sage Girl Scouts Council, Inc.  
Member, Board of Directors (1996 – 2000)  
Personnel Committee, Chairman (1996 – 2000)  
Executive Director Selection Committee (1999)  
Affirmative Action Task Force (1999)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national

origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To my knowledge, these organizations do not currently discriminate nor have they ever formally discriminated on the basis of race, sex, religion, or national origin either through formal membership requirements or the practical implementation of membership policies.

## **12. Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Idaho Employment Law Newsletters by Holland & Hart LLP, M. Lee Smith Publishers, April 1996 to approximately September 2002. I edited and occasionally wrote articles related to employment law topics for this monthly newsletter. I did not retain, and am unable to locate, copies of the newsletters or articles that I wrote or edited.

“Ask Walter” News Column, Idaho Statesman, approximately June 1998 to approximately October 2001. I occasionally wrote and edited articles for this newspaper column, which ran under the name of Walter H. Bithell, a partner at Holland & Hart. The topics related to general legal questions submitted to the newspaper. I did not retain, and am unable to locate, copies of the columns or the articles that I wrote or edited.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

Idaho Supreme Court Evidence Rules Advisory Committee, report recommending changes to the Idaho Rules of Evidence. While I was a member of the committee, I attended a meeting on December 1, 2017, regarding the incorporation of certain changes to the Federal Rules of Evidence into the Idaho Rules of Evidence. Minutes of this meeting supplied. Comments on the proposed amendments were solicited in January 2018, and a court staff attorney transmitted a report on this subject in February 2018 to the Idaho Supreme Court on the recommended amendments. Report supplied.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

None.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

I have searched electronic databases and paper files that I have maintained in an effort to identify all events responsive to this question and have located the following information. I have no notes, transcripts, or recordings for any of the speeches identified.

April 14, 2022: Speaker, Appellate Section of the Idaho State Bar Association, Boise, Idaho. I spoke to this group about the history and operations of the Idaho Court of Appeals. The Idaho State Bar Association's address is 525 West Jefferson Street, Boise, Idaho 83702.

August 19, 2021: Speaker, University of Idaho College of Law, Boise, Idaho. I spoke to a group of new law students about legal ethics at the College's Professionalism Day Program during student orientation at the Boise campus. The University of Idaho College of Law's Boise campus is located at 501 West Front Street, Boise, Idaho 83702.

March 10, 2020: Speaker, University of Idaho College of Law, Moscow, Idaho. I sat on a panel with other Idaho Court of Appeal judges and spoke about professional development to a group of law students at the College's Moscow campus. The College of Law's Moscow campus is located at 875 Perimeter Drive, Moscow, Idaho 83844

1999 (specific date unknown): Speaker, Holland & Hart Employment Law Update, Denver Tech Center, Colorado. I spoke to human resource managers about recent developments in employment law. The Denver address for Holland & Hart is 555 17th Street, Suite 3200, Denver, Colorado 80202.

1999 (specific date unknown): Speaker, Idaho Human Resources Organization,

Boise, Idaho. I spoke to human resources personnel about recent developments in employment law. The Idaho Human Resources Organization appears to be defunct.

1998 (specific dates unknown): Speaker, Council on Education in Management Seminars, Boise, Idaho. On two occasions, I spoke to human resources personnel and managers on employment law issues including privacy rights, drugs and alcohol in the workplace, and sexual harassment. On three other occasions, I spoke to human resources personnel and managers on employment law issues including risk-free hiring, at-will employment, and privacy rights. The Council on Education in Management appears to be defunct.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Press Release, "Idaho Gov. Otter: Moeller Appointed to Supreme Court" (Nov. 30, 2018). Copy supplied.

- 13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Since 2019, I have served as a judge on the Idaho State Court of Appeals. In 2018, the Governor of Idaho, Leroy "Butch" Otter appointed me to fill an unexpired term of a retired judge. In 2020, I ran for, and was elected to, a six-year term on the Court.

Idaho Code section 1-2406 establishes the jurisdiction for the Idaho Court of Appeals. The Court of Appeals has jurisdiction to hear and decide all cases that the Idaho Supreme Court assigns to it, which are primarily criminal appeals. The Supreme Court may not assign appeals invoking the Supreme Court's original jurisdiction or appeals involving capital punishment sentences, the industrial commission, or the public utilities commission.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment?

I estimate that I have filed or joined in approximately 1,450 opinions during my time on the Idaho Court of Appeals, not counting cases dismissed before argument.

- i. Of these cases, approximately what percent were:

jury trials:	N/A
bench trials:	N/A

ii. Of these cases, approximately what percent were:

civil proceedings:	5%
criminal proceedings:	95%

b. Provide citations for all opinions you have written, including concurrences and dissents.

See attached list of opinions.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature of the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *State v. Galindo*, No. 48123, \_\_\_ P.3d \_\_\_, 2022 WL 4372204 (Idaho Ct. App. Sept. 22, 2022).

Galindo appealed his conviction for trafficking methamphetamine, challenging the denial of his motion to suppress. After an officer lawfully stopped the vehicle Galindo was driving, Galindo complained he was ill and responded affirmatively when asked if he wanted an ambulance. As paramedics examined Galindo in the ambulance, the officer prepared the traffic citation. Paramedics were still examining Galindo when the officer completed writing the citation so he remained in his patrol vehicle and began writing the traffic stop narrative. Meanwhile, a second officer asked for and received Galindo's consent to search the vehicle. After Galindo exited the ambulance, the first officer, who had prepared the citation, began explaining the citation to Galindo. As the first officer was explaining the citation, the second officer found a digital scale with visible methamphetamine residue in the vehicle. As a result, the first officer did not return Galindo's documentation or serve the citation. About six seconds after the first officer finished explaining the citation, the second officer found methamphetamine in the vehicle. Galindo moved to suppress, arguing the first officer unlawfully extended the stop by not interrupting Galindo's medical examination to serve him the citation and rendered his consent to the search invalid. The district court denied this motion. On appeal, the Idaho Court of Appeals, in an opinion I authored, affirmed the denial, concluding Galindo—not the officer—delayed the traffic stop by requesting and receiving medical treatment. Further, we rejected Galindo's argument that the first officer should have interrupted Galindo's medical treatment to deliver the citation.

Counsel for Appellant:

Kiley A. Heffner

Idaho State Public Defender's Office

322 East Front Street, Suite 570  
Boise, ID 83702  
(208) 334-2712

Counsel for Respondent:

Kenneth K. Jorgensen  
Idaho Attorney General's Office, Criminal Law Division  
954 West Jefferson Street, Second Floor  
Boise, ID 83720  
(208) 334-4534

2. *State v. Colpitts*, No. 47388, 511 P.3d 873 (Idaho Ct. App. 2022).

Colpitts appealed her conviction for first-degree murder arguing the district court erred by admitting audio recordings of an inmate's jailhouse calls and refusing to instruct the jury that a witness was an accomplice as a matter of law. In an opinion I authored, the Idaho Court of Appeals ruled that the district court's evidentiary rulings and jury instructions were not in error and affirmed the conviction.

Counsel for Appellant:

Andrea W. Reynolds  
Sally J. Cooley  
Idaho State Public Defender's Office  
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(208) 334-2712

Counsel for Respondent:

Kenneth K. Jorgensen  
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3. *State v. Olvera*, No. 47546, 2021 WL 5175079 (Idaho Ct. App. Nov. 8, 2021).

The jury found Olvera, a juvenile, guilty of robbery and first-degree murder after another juvenile was shot multiple times and died. On appeal, Olvera challenged the district court's denial of his suppression motion, asserting he did not waive his Fifth Amendment rights knowingly, voluntarily, and intelligently. Olvera argued that he did not understand his *Miranda* rights and that his mother's absence during his confession was a factor in determining whether he understood his rights. In an opinion I authored, the Idaho Court of Appeals ruled that substantial and competent evidence supported the district court's conclusion that Olvera knowingly, voluntarily, and intelligently waived his Fifth Amendment rights.

Counsel for Appellant:

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Counsel for Respondent:

Andrew V. Wake  
Idaho Attorney General's Office, Criminal Law Division  
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(208) 334-4534

4. *State v. Nelson*, No. 47418, 2021 WL 4259144 (Idaho Ct. App. Sept. 20, 2021).

Nelson appealed his conviction for trafficking in methamphetamine, challenging the district court's denial of his suppression motion. Nelson argued the officers lacked reasonable suspicion to detain him outside a hotel based on a call from "hotel management and staff" reporting complaints from unidentified hotel guests about sexual and drug activity in one of the rooms. In an opinion I authored, the Idaho Court of Appeals ruled that the tip from "hotel management and staff" lacked adequate indicia of reliability to establish reasonable suspicion, reversed the district court's order denying the suppression motion, and vacated the conviction. On remand, the prosecution dismissed the charges against Nelson.

Counsel for Appellant:

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Boise, ID 83702  
(208) 334-2712

Counsel for Respondent:

Kale D. Gans  
Idaho Attorney General's Office, Criminal Law Division  
954 West Jefferson Street, Second Floor  
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5. *Baker v. State*, No. 47793, 494 P.3d 1256 (Idaho Ct. App. 2021).

At trial, the State admitted the testimony of an inmate incarcerated with Baker who testified Baker had confessed to murdering his infant daughter, and the jury

convicted Baker of first-degree murder. Subsequently Baker filed a petition for post-conviction relief alleging numerous claims of ineffective assistance of counsel and a violation under *Brady v. Maryland*, 373 U.S. 83 (1963). Baker's *Brady* claim alleged the State failed to disclose: (1) the inmate's prior testimony in an unrelated murder trial in which the inmate had also testified to another individual's murder confession; and (2) the inmate's incarceration records showing he had been transferred to a minimum-security facility following his testimony despite a notation in his file that he was ineligible for such a transfer. The district court summarily dismissed Baker's claims, and Baker appealed. In an opinion I authored, the Idaho Court of Appeals ruled that Baker established genuine issues of material fact in support of his *Brady* claim and remanded for further proceedings on that claim; it affirmed the district court's dismissal of Baker's other claims. On remand, the parties entered into a settlement agreement in which the prosecution agreed to a reduction of Baker's sentence in the underlying case in exchange for a stay of Baker's post-conviction proceedings pending the results of Baker's upcoming parole hearing.

Counsel for Appellant:

Craig H. Durham  
Ferguson Durham PLLC  
223 North 6th Street, Suite 325  
Boise, ID 83702  
(208) 724-2617

Counsel for Respondent:

Kenneth K. Jorgensen  
Idaho Attorney General's Office, Criminal Law Division  
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Boise, ID 83720  
(208) 334-4534

6. *State v. Doe* (2020-47), No. 48444, 483 P.3d 1039 (Idaho Ct. App. 2021).

A mother appealed the magistrate court's judgment terminating her parental rights to her five minor children. The mother argued the court's findings that she neglected the children and that terminating her parental rights was in the children's best interests were unsupported. Additionally, she argued the court failed to consider the coronavirus pandemic's impact on her ability to perform her case plan. In an opinion I authored, the Idaho Court of Appeals affirmed, ruling that substantial and competent evidence supported the magistrate court's findings and that the mother failed to show the pandemic adversely affected her ability to perform her case plan.

Counsel for Appellant:

James T. Baird  
601 Pole Line Road, Suite 4

Twin Falls, ID 83301  
(208) 736-3050

Counsel for Respondent:

Rockne K. Lammers  
121 3rd Avenue East  
Jerome, ID 83338  
(208) 324-7200

Theodore R. Larsen  
(physical address unavailable)  
Jerome, ID 83338  
(208) 420-9644

7. *State v. Taylor*, No. 47260, 481 P.3d 767 (Idaho Ct. App. 2021).

A jury convicted Taylor of first-degree murder for killing his father and second-degree murder for killing his mother. Taylor appealed his conviction for first-degree murder, arguing the State failed to present sufficient evidence to prove premeditation. In an opinion I authored, the Idaho Court of Appeals ruled that substantial, competent circumstantial evidence was sufficient to prove Taylor's premeditation to murder his father and affirmed the conviction.

Counsel for Appellant:

Elizabeth A. Allred  
Sally J. Cooley  
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322 East Front Street, Suite 570  
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(208) 334-2712

Counsel for Respondent:

Kale D. Gans  
Idaho Attorney General's Office, Criminal Law Division  
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8. *State v. Page*, No. 46352, 2020 WL 241570 (Idaho Ct. App. Jan. 14, 2020).

Page appealed her conviction for possession of methamphetamine, challenging the district court's denial of her suppression motion. Page argued the officers abandoned their community caretaking duties to conduct an investigation into criminal activity without reasonable suspicion. In an opinion I authored, the Idaho Court of Appeals ruled that the stark contrast between the officers' testimony and the video from an officer's body camera showed the district court's

factual findings were clearly erroneous. We reversed the district court's order and dismissed Page's conviction. On remand, the district court dismissed the charges against Page.

Counsel for Appellant:

Brian R. Dickson  
Idaho State Public Defender's Office  
322 East Front Street, Suite 570  
Boise, Idaho 83702  
(208) 334-2712

Counsel for Respondent:

Kenneth K. Jorgensen  
Idaho Attorney General's Office, Criminal Law Division  
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(208) 334-4534

9. *Marsalis v. State*, No. 45583, 2019 WL 2305120 (Idaho Ct. App. May 30, 2019), *aff'd*, 458 P.3d 203 (Idaho 2020).

A jury convicted Marsalis of rape after he allegedly drugged the victim. Subsequently, Marsalis filed a petition for post-conviction relief alleging numerous claims of ineffective assistance, including that his counsel failed to seek exclusion of the State's expert witness, who had an expertise in forensic toxicology and pharmacology and who testified about the victim's intoxication at the time of the rape based on retrograde extrapolation. Marsalis also alleged his counsel failed to advise him of his speedy trial rights under the Interstate Agreement on Detainers. The district court summarily dismissed Marsalis' claims, and he appealed. In an opinion I authored, the Idaho Court of Appeals ruled that Marsalis established genuine issues of material fact in support of his claims that his counsel failed to seek exclusion of the State's expert witness and to advise Marsalis of his speedy trial rights. We reversed the district court's dismissal of these claims, remanded the case for an evidentiary hearing, and affirmed the dismissal of Marsalis' other claims. The Idaho Supreme Court affirmed our decision, and on remand, Marsalis' claims of ineffective assistance of counsel proceeded to trial.

Counsel for Appellant:

Greg S. Silvey  
1161 West River Street  
Boise, ID 83702  
(208) 286-7400

Counsel for Respondent:

Kenneth K. Jorgensen

Idaho Attorney General's Office, Criminal Law Division  
954 West Jefferson Street, Second Floor  
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(208) 334-4534

10. *Severson v. State*, No. 45780, 2019 WL 1787315 (Idaho Ct. App. Apr. 14, 2019).

After a 17-day trial, a jury convicted Severson of first-degree murder for killing his wife and of poisoning her food or medicine. Subsequently, Severson filed successive petitions for post-conviction relief alleging numerous claims of ineffective assistance of trial and appellate counsel. Following an evidentiary hearing on Severson's third petition, the district court dismissed his claims and Severson appealed. Following a review of the entire record, the Idaho Court of Appeals ruled, in an opinion I authored, that the district court did not err in dismissing Severson's claims and affirmed its denial of his petition.

Counsel for Appellant:

John R. Kormanik  
Kormanik & Sneed LLP  
206 West Jefferson Street  
Boise, ID 83702  
(208) 288-1888

Counsel for Respondent:

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- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. *State v. Galindo*, No. 48123, \_\_\_ P.3d \_\_\_, 2022 WL 4372204 (Idaho Ct. App. Sept. 22, 2022).

Counsel for Appellant:

Kiley A. Heffner  
Idaho State Public Defender's Office  
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Counsel for Respondent:

Kenneth K. Jorgensen  
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2. *State v. Colpitts*, 511 P.3d 873 (Idaho Ct. App. 2022).

Counsel for Appellant:

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Counsel for Respondent:

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3. *State v. Olvera*, No. 47546, 2021 WL 5175079 (Idaho Ct. App. Nov. 8, 2021).

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4. *State v. Nelson*, No. 47418, 2021 WL 4259144 (Idaho Ct. App. Sept. 20, 2021).

Counsel for Appellant:

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Counsel for Respondent:

Kale D. Gans  
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5. *Baker v. State*, No. 47793, 494 P.3d 1256 (Idaho Ct. App. 2021).

Counsel for Appellant:

Craig H. Durham  
Ferguson Durham PLLC  
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Counsel for Respondent:

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6. *State v. Doe (2020-47)*, No. 48444, 483 P.3d 1039 (Idaho Ct. App. 2021).

Counsel for Appellant:

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601 Pole Line Road, Suite 4  
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(physical address unavailable)  
Jerome, ID 83338  
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7. *State v. Taylor*, No. 47260, 481 P.3d 767 (Idaho Ct. App. 2021).

Counsel for Appellant:

Elizabeth A. Allred  
Sally J. Cooley  
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Counsel for Respondent:

Kale D. Gans  
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8. *State v. Page*, No. 46352, 2020 WL 241570 (Idaho Ct. App. Jan. 14, 2020).

Counsel for Appellant:

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Counsel for Respondent:

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9. *Marsalis v. State*, No. 45583, 2019 WL 2305120 (Idaho Ct. App. May 30, 2019), *aff'd*, 458 P.3d 203 (Idaho 2020).

Counsel for Appellant:

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Counsel for Respondent:

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10. *Severson v. State*, No. 45780, 2019 WL 1787315 (Idaho Ct. App. Apr. 14, 2019).

Counsel for Appellant:

John R. Kormanik  
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206 West Jefferson Street  
Boise, ID 83702  
(208) 288-1888

Counsel for Respondent:

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Idaho Attorney General's Office, Criminal Law Division  
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- e. Provide a list of all cases in which certiorari was requested or granted.

The United States Supreme Court has not granted, and no party has requested, certiorari in any case that I have authored or joined in the opinion.

- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

The Idaho Supreme Court reversed the Idaho Court of Appeals' decision in the following cases, which I authored:

*State v. Miramontes*, No. 47628, 2021 WL 5366693 (Idaho Ct. App. Nov. 18, 2021), *rev'd*, 517 P.3d 849 (Idaho 2022). While officers were conducting a probationary check on an individual at a residence, they saw Miramontes exit the residence carrying a bag. After an officer repeatedly ordered Miramontes to stop, she complied and dropped the bag. Later, when an officer asked Miramontes for her identification, she explained it was in the bag. Another officer opened the bag to retrieve the identification and discovered drugs and drug paraphernalia. Miramontes moved to suppress the evidence arguing the officers lacked reasonable suspicion to detain her and to search the bag. The district court ruled that the officers lawfully detained Miramontes but did not address her argument that the officers lacked reasonable suspicion to search her bag. On appeal, Miramontes argued only that the officers unlawfully searched her bag. The Idaho

Court of Appeals affirmed the district court, ruled Miramontes failed to preserve for appeal whether the search of the bag was unlawful, and relied on Idaho Supreme Court authority that an appellate court will not review an assignment of error unless the record discloses an adverse ruling on the issue. The Idaho Supreme Court concluded it is no longer mandatory for an appellant to obtain an adverse ruling from the trial court to preserve an issue for appellate review, expressly overruled its prior authority to the contrary, and remanded to the district court to analyze whether the search of the bag was unlawful.

*State v. Wilson*, No. 47275, 2020 WL 4876845 (Idaho Ct. App. Aug. 20, 2020) *rev'd*, 495 P.3d 1030 (Idaho 2021). An officer encountered Wilson and his passengers in the drive-through lane of a fast food restaurant following a known informant's report of a drunk driver. The officer saw empty beer cans in the car, smelled the strong odor of alcohol, and asked Wilson to pull into the parking lot where the officer arrested Wilson for driving under the influence. The district court granted Wilson's suppression motion, rejecting the State's argument that the officer was performing a community caretaking function and ruling that reasonable suspicion did not support Wilson's detention because the presence of empty cans and the odor of alcohol did not establish Wilson himself had consumed alcohol. The Idaho Court of Appeals reversed this decision, ruling that the officer's observations in the drive-through lane established reasonable suspicion. The Idaho Supreme Court reversed, ruling that the State failed to preserve for appellate review whether the officer had reasonable suspicion to detain Wilson when he ordered Wilson to pull into the parking lot.

The Idaho Supreme Court affirmed the Idaho Court of Appeals' decisions in the following cases, which I authored, but criticized my ruling:

*State v. Neimeyer*, No. 46857, 2020 WL 2534003 (Idaho Ct. App. May 19, 2020), *aff'd*, 490 P.3d 9 (Idaho 2021). Neimeyer appealed her judgment of conviction for possession of methamphetamine, marijuana, and drug paraphernalia. Neimeyer argued the district court erred by taking judicial notice of and relying on a local ordinance prohibiting an open container of alcohol in her vehicle to deny her suppression motion. The Idaho Court of Appeals affirmed the district court's decision ruling that the court properly took judicial notice of the ordinance. On review, the Idaho Supreme Court also affirmed the district court's denial of the suppression motion. It ruled, however, that Neimeyer failed to preserve for appeal the issue of whether the district court erred by judicially noticing the ordinance and declined to address the merits of the issue.

*State v. Riley*, No. 47372, 2021 WL 454250 (Idaho Ct. App. Feb. 9, 2021), *aff'd*, 514 P.3d 982 (Idaho 2022). A Boise police officer initiated a traffic stop of Riley for expired registration tags. During the stop, the officer inquired whether Riley had contraband in the car. Then, while writing Riley a ticket, the officer had a conversation with backup officers who arrived on the scene with a drug dog. The videos from the officers' body cameras captured these conversations. After the

drug dog alerted on Riley's car, officers discovered drugs and drug paraphernalia. Riley moved to suppress this evidence, arguing the officer's conversations unrelated to the traffic stop unlawfully extended the stop. The district court granted the motion, finding it could not conclude whether conversations unlawfully extended the stop. The State appealed, arguing this finding was clearly erroneous. The Idaho Court of Appeals ruled that a review of the synchronized videos showed the conversations did not unlawfully extend the stop. On review of this decision, the Idaho Supreme Court likewise reversed the district court ruling, holding that the videos showed the conversations did not extend the stop unlawfully. The Court, however, criticized the Court of Appeals for relying on a case, *State v. Still*, 453 P.3d 220 (Idaho Ct. App. 2019), which the Idaho Supreme Court overruled after the Idaho Court of Appeals issued its decision in *Riley*.

*State v. Glodowski*, No. 45285, 457 P.3d 917 (Idaho Ct. App. 2019), *aff'd*, 457 P.3d 917 (2019). Glodowski was required to register as a sex offender in Wisconsin and relocated to Idaho. The Idaho State Police Bureau of Criminal Identification reviewed Glodowski's Wisconsin conviction and concluded that his conduct was "substantially equivalent" to a violation of Idaho law and that he was required to register as a sex offender in Idaho. Glodowski did not challenge this conclusion and registered in Idaho. Thereafter, the State charged him with failure to register when he failed to return his quarterly verification form. Before trial, the State moved *in limine* for a ruling that Glodowski's Wisconsin's conviction was "substantially equivalent" to a violation of Idaho law, and the district court ruled that it was. On appeal, Glodowski challenged this ruling, and the Idaho Court of Appeals concluded the Bureau's order was final; the district court lacked authority to review the order and re-determine the issue; and thus, it lacked jurisdiction. The Idaho Supreme Court affirmed, concluding that the district court improperly allowed the State to seek determination of the Bureau's order but that the error did not deprive the court of jurisdiction; rather, it was harmless error.

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

To date, I have authored 203 opinions, 23 of which have been published. The remaining opinions are unpublished, although all of those unpublished opinions are available in Westlaw. Additionally, all my opinions are reported on the Idaho Supreme Court's website, <https://isc.idaho.gov>, and stored in the Court's network.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

I have not authored any significant opinions on federal or state constitutional issues. The Idaho Court of Appeals is an error correcting court and does not address significant federal or state constitutional issues. *See Idaho Code*

§ 2406(2) (noting “error review and correction functions” of Idaho Court of Appeals).

- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on any federal court of appeals.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I assess the necessity or propriety of recusal based on the Idaho Judicial Code of Conduct. I have never been requested to recuse myself on any case. I, however, have sua sponte recused myself in one appeal before the Idaho Court of Appeals. In that case, an individual convicted of a crime in Ada County, Idaho, filed a civil action against public officials including the Ada County Prosecutor, who is a personal friend. Because the plaintiff filed the action against her individually (not in her capacity as the county prosecutor), I determined that my impartiality might reasonably be questioned and that the issue was incurable. I have searched both the Court’s electronic database and publicly-available electronic databases and have been unable to locate the case’s citation, although I believe the appeal was filed in 2019.

15. **Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

Other than my position as a judge on the Idaho Court of Appeals, I have not held any public offices. In 2018, I unsuccessfully applied for an appointed position on the Idaho Supreme Court.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have not ever held any memberships or offices or rendered any services to any political party or election committee. I have also not held any position or played any role in any political campaign, other than my 2020 reelection campaign.

16. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

From 1993 to 1995 I clerked for Judge Thomas G. Nelson of the U.S. Court of Appeals for the Ninth Circuit.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced law alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each;

1995 – 2013  
Holland & Hart LLP  
800 West Main Street, Suite 1750  
Boise, Idaho 83702  
Partner (2003 – 2013)  
Associate (1995 – 2002)

2013 – 2018  
Andersen Schwartzman Woodard Brailsford PLLC (now defunct)  
(formerly known as Andersen Banducci PLLC)  
101 South Capital Boulevard, Suite 1601  
Boise, Idaho 83702

Member (2013-2017)  
Counsel (2018)

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have never served as a mediator or arbitrator in any alternative dispute resolution proceedings.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

I began my law practice as an associate at Holland & Hart LLP, in the Boise, Idaho office. From 1995 into 1997, the nature of my practice was very general. I did not have an assigned department, but rather I assisted all senior attorneys in the Boise office (and occasionally other Holland & Hart offices) in their practice areas including general business, civil litigation, bankruptcy, employment law, and environmental law.

In 1998, I began focusing my practice primarily on employment law, including both litigation and business advising, although I also continued to support senior attorneys in their respective practice areas. During this time, much of my practice involved advising employers on human resources issues and defending employers in litigation, in both state and federal courts, and before the Equal Employment Opportunity Commission and the Idaho Human Rights Commission.

In 2002, I became a partner at Holland & Hart and my practice focused primarily on civil litigation. During this time, I handled all aspects of civil litigation, including managing clients and litigation teams; conducting written and deposition discovery; working with expert witnesses; briefing and arguing motions, including discovery and substantive legal issues; participating in mock trials; preparing for and presenting at trial; and handling post-trial proceedings. Beginning in about 2006, much of the civil litigation I handled was complex in nature, requiring intensive management and involving issues on a national level.

In 2013, I formed a new law firm, Andersen Schwartzman Woodard Brailsford PLLC (formerly known as Andersen Banducci PLLC). My practice continued to focus on complex civil litigation, including national multi-district class actions, until I resigned as a member from the firm in 2017. During 2018, I worked for the firm on a contract basis on numerous civil litigation matters.

Since 2019, I have served as a judge for the Idaho Court of Appeals.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

From 1995 until about 1998, the types of clients I represented were diverse and included individuals, small businesses, closely held corporations or similar business entities, and corporations having legal issues in Idaho. Beginning in 1999, my clients were most often employers, although I occasionally represented corporate executives or physicians in employment law matters in Idaho.

Beginning in 2002 until about 2011, my client base shifted to corporations and Idaho agricultural producers organized under various types of legal entities ranging from sole proprietorship to large corporations. From 2011 until 2018, my clients continued to be Idaho agricultural producers but also included agricultural cooperatives, some individuals, business entities, law firms, and a public university.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

From 1995 until about 2002, my practice was at least 50 percent in civil litigation. After 2002, my practice was nearly 100 percent civil litigation. I frequently appeared in court at all stages of litigation including appearing at court hearings for preliminary injunctions; motions to dismiss for failure to state a claim or lack of jurisdiction; discovery related motions; summary judgment motions; motions *in limine*, including *Daubert* motions; mock trials; trial proceedings in both jury and court trials; post-trial motions; and appellate arguments.

- i. Indicate the percentage of your practice in:

1. federal courts:	60%
2. state courts of record:	35%
3. other courts:	0%
4. administrative agencies:	5%

- ii. Indicate the percentage of your practice in:

1. civil proceedings:	100%
2. criminal proceedings:	0%

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

As an associate or other support attorney, I estimate I assisted on approximately 20 cases in state or federal court that were tried to verdict. Additionally, I handled the following trial responsibilities: As sole counsel, I tried one case to verdict in a bench trial; as co-counsel I tried one case to verdict in a bench trial; as co-counsel, I tried two cases to verdict in jury trials, including one trial lasting 17 weeks in federal court. I also estimate that I either handled as sole counsel or assisted on at least 20 cases resolved by summary judgment.

- i. What percentage of these trials were:
  1. jury: 75%
  2. non-jury: 25%

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court of the United States.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *United Potato Growers of America, Inc., et al. v. Jones, Waldo, Holbrooke & McDonough, P.C., et al.*, Idaho State Court, Fifth Judicial District, Twin Fall County, Case No. CV42-15-4106 (Bevan, J.).

I assisted lead counsel in this case representing the plaintiffs, including two potato cooperatives and several of their grower members, against their former legal counsel, which negligently advised them that their marketing and other activities were immune from antitrust liability under the Capper-Volstead Act, 7 U.S.C. § 291. This inaccurate legal advice resulted in the cooperatives being sued in multi-district class actions causing them to incur liability for purported damages and significant legal fees. My involvement in this case included preparing pleadings; propounding and responding to written

discovery; and assisting in preparing pretrial motions. The case resolved through mediation. My representation in this case spanned from approximately 2017 to 2018.

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Primary Opposing Counsel:

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15 West South Temple, Suite 1200  
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2. *Clark et al. v. Jones Gledhill Fuhrman Gourley, et al.*, Idaho State Court, Fourth Judicial District, Ada County, Case No. CV-OC-2016-04633 (Hoagland, J.).

I was lead counsel in this litigation and represented the defendants, the Jones Gledhill law firm and two of its attorneys in an action brought by Mr. Clark. Mr. Clark alleged Jones Gledhill had failed to protect his interest in an attorney fee lien under Idaho Code § 3-205. The underlying action was a wrongful death action arising from the carbon dioxide poisoning death. Mr. Clark co-counseled with the Spence Law Firm to represent the plaintiffs in that wrongful death action; Jones Gledhill represented the defendants in that case. When the underlying action settled, Jones Gledhill transmitted the settlement funds to the Spence Law Firm and not to Mr. Clark, whose representation the plaintiffs had previously terminated. Mr. Clark sued Jones Gledhill for failing to protect his purported attorney fee lien against the settlement funds. My participation in this case included briefing and arguing the motion to dismiss for failure to state a claim, which the district court granted, and briefing and arguing the appeal. The Idaho Supreme Court affirmed the dismissal. My representation in this case spanned from approximately 2016 to 2017.

Co-Counsel:

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Kirton McConkie  
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Primary Opposing Counsel:

Eric R. Clark  
(physical address unknown)  
Eagle, ID  
(208) 830-8084

Reported Decisions:

*Clark v. Jones Gledhill Fuhrman Gourley, P.A.*, 409 P.3d 795 (Idaho 2017).

3. *Clark et al. v. The Spence Law Firm et al.*, Idaho State Court, Third Judicial District, Canyon County, Case No. CV-2016-06347 (Perry, J.).

I was lead counsel in this case brought by the plaintiff, Mr. Clark, against three of his former clients in a wrongful death action; his former co-counsel in that case, the Spence Law Firm; and two Spence attorneys. The plaintiffs alleged under numerous different theories that his former clients and co-counsel owed him fees for recoveries occurring after the clients terminated his representation in the wrongful death case. My participation in this case included propounding and responding to voluminous discovery, drafting and arguing numerous discovery and other motions, including summary judgment motions. The case resolved in mediation. My representation in this case spanned from approximately 2015 to 2017.

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Primary Opposing Counsel:

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4. *Pinnacle Great Plains Operating Company, LLC v. Wynn Dewsnup Revocable Trust, et al.*, D. Idaho, Case No. 4:13 cv-00106-EJL-CWD (Dale, M.J.).

In this case, I was lead counsel representing the plaintiff, a corporate farm investor, which asserted fraud and breach of contract claims against the seller of a farm, alleging the seller failed to disclose the poor quality of underground irrigation water. Eventually, the investor also asserted claims against its own realtor for fraudulently concealing the irrigation water quality problem in violation of the Idaho Real Estate Brokerage Representation Act, Idaho Code §§ 54-2082 - 2097. *Pinnacle Great Plains Operating Company, LLC v. 1 Stop Realty, Kirk Swenson*, Case No. 1:17-cv-00120-BLW (D. Idaho) (Dale, M.J.). I handled all aspects of this litigation from its inception including briefing and arguing motions; propounding and responding to written discovery; taking and defending depositions; retaining and working with experts to prepare their reports; and briefing and arguing various pretrial motions. The case settled in mediation shortly before trial. My representation in this case spanned from approximately 2013 to 2017.

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Office of the General Counsel  
University Plaza  
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Reported Decisions:

*Pinnacle Great Plains Operating Co., LLC v. Wynn Dewsnup Revocable Trust*, 996 F. Supp. 2d 1026 (D. Idaho 2014).

5. *Boise State University v. The American Athletic Conference*, Idaho State Court, Fourth Judicial District, Ada County, Case No. CV CV-2013-6584 (Copsey, J.).

I was co-lead counsel representing Boise State University against the American Athletic Conference (formerly known as the Big East Conference) for breach of contract and a declaratory judgment that a \$5 million contractual penalty was inapplicable for BSU's decision not to have its football program join the ACC. My involvement in this case included managing the client relationship; drafting pleadings; managing information released to the press; propounding and responding to discovery requests; developing an electronic discovery protocol; briefing and arguing discovery motions, including a complicated attorney-client privilege motion; taking and defending depositions; and participating in mediation. The case settled at mediation. My representation in this case spanned from approximately 2013 to 2014.

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Primary Opposing Counsel:

Benjamin C. Block  
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One CityCenter  
850 Tenth Street, Northwest

Washington, DC 20001  
(202) 662-6000

6. *In re Fresh and Process Potatoes Antitrust Litigation Class Action*, D. Idaho, Multi-District Litigation, Case No. 4:10-MDL-2186-BLW-CWD (Winmill, J.; Dale, M.J.).

In this national class action, I was co-lead counsel representing two agricultural cooperatives organized under the Capper-Volstead Act, 7 U.S.C. § 291, and approximately 18 Idaho potato growers, processors, and marketers, who were allegedly members of or otherwise participated in these cooperatives. The case arose out of the cooperatives' activities to stabilize potato prices both in Idaho and nationally under the Capper-Volstead Act, which provides growers with immunity for collectively processing, preparing for market, handling, and marketing their produce. The plaintiffs included two classes of potato purchasers—direct and indirect purchasers—who disputed defendants' immunity and alleged \$5 billion in damages. Under antitrust laws, each defendant faced joint and several liability for these damages. My participation in this case included all aspects of its preparation for trial including handling voluminous, complicated discovery disputes and the related briefing and oral arguments; defending approximately 30 depositions; managing client relations; communicating and coordinating with co-defendants' counsel; and participating in numerous mediations. After extensive, complex discovery and multiple mediations, the case settled for \$19 million. My representation of these defendants also involved related litigation, including two cases brought by plaintiffs who opted out of the class action: *Associated Wholesale Grocers, Inc. v. United Potato Growers of America*, Case No. 13-cv-2182 JAR/DJW (D. Kan.), and *Winn-Dixie Stores, Inc. and Bi-Lo Holding, LLC v. United Potato Growers of America*, Case No. 3:15-cv-1243-J-34MCR (M.D. Fl.). My representation in these cases spanned from approximately 2011 to 2016.

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Primary Opposing Counsel:

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Reported Decisions:

*In re Fresh and Process Potatoes Antitrust Litigation*, 834 F. Supp. 2d 1141 (D. Idaho 2011); 744 F. Supp. 2d 1381 (D. Idaho 2010).

7. *Truckstop.net LLC v. Sprint Communications Co.*, D. Idaho, Case Nos. CV-04-561-S-BLW, CV-05-138-BLW (Winmill, J.).

I was co-lead counsel in this litigation representing the plaintiff, a wireless internet provider, which contracted with Sprint Communications to install wireless internet access at truckstops across the United States. The plaintiff alleged a breach of contract claim against Sprint Communications and a claim for tortious interference against its parent company, Sprint, which instructed Sprint Communications to breach the contract. My participation in this case included assisting in the temporary restraining order filings and related hearing; drafting and responding to extensive, voluminous discovery; taking and defending numerous depositions; briefing an interlocutory appeal; briefing and arguing numerous discovery and pretrial motions, including summary judgment motions; working with experts to prepare expert reports; preparing for trial including preparing fact and expert witnesses, deposition designations, preparing exhibits and exhibit lists; presenting at a mock trial; arguing pretrial motions; and participating in settlement negotiations. The case settled on the eve of trial for a significant but confidential amount. My representation in this case spanned from approximately 2005 to 2010.

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Stephen R. Thomas  
Hawley Troxell  
877 West Main Street  
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Reported Decisions:

*Truckstop.Net, LLC v. Sprint Corp.*, 547 F.3d 1065 (9th Cir. 2008).

8. *Intermountain Eye and Laser Centers, PLLC v. Miller*, Idaho State Court, Fourth Judicial District, Ada County (McLaughlin, J.).

I was lead counsel in this litigation and represented the defendant, a doctor, whose former employer brought a breach of contract claim against him alleging he violated a post-termination, non-competition clause. I handled all aspects of this litigation including propounding and responding to discovery, briefing and arguing discovery motions, taking and defending depositions, briefing and arguing the summary judgment motion, briefing and arguing the appeal, and handling mediation. The defendant prevailed on summary judgment; the Idaho Supreme Court reversed the judgment on appeal; and the case settled shortly thereafter for a nominal amount. My representation in this case spanned from approximately 2003 to 2006.

Co-Counsel:

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Kirton McConkie  
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Primary Opposing Counsel:

Hon. Warren Jones (deceased)

Neil McFeeley  
Eberle Berlin  
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Boise, ID 83701  
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Reported Decisions:

*Intermountain Eye and Laser Centers, PLLC, v. Miller*, 127 P.3d 121 (Idaho 2005).

9. *Adams et al. v. United States et al.*, D. Idaho, Civ. No. 03-0049-E-BLM (Winmill, J.).

I was co-lead counsel in this litigation representing approximately 130 Idaho growers with farming operations in southeastern Idaho who alleged tort claims against the Bureau of Land Management (BLM) and numerous product liability claims against E. I. du Pont de Nemours and Company (DuPont). These claims arose out of the BLM's application of a potent herbicide manufactured by DuPont, Oust, on large swaths of burnt, barren Idaho rangelands. Following the BLM's Oust applications, winds blew Oust off-target and onto thousands of acres of Idaho farmland, contaminating those lands for as many as four years from 2000 through 2004. My participation in this case included preparing tort claims; researching and drafting the complaint against DuPont; collecting voluminous documentation about the growers' farming operations; managing and handling all matters related to discovery, including numerous voluminous document productions, taking and defending approximately 80 depositions, and preparing expert witnesses; handling numerous pretrial motions; arguing pending motions; preparing and supervising the preparation of exhibit lists, deposition designations, trial witnesses, and demonstratives; presenting at multiple mock trials; drafting a jury questionnaire; assisting in the jury selection; preparing witnesses; preparing and supervising the preparation of trial motions related to evidentiary issues and directed verdicts; preparing jury instructions; and assisting with post-trial motions. The jury rendered a verdict for the four-bellwether plaintiffs and awarded them \$17.8 million in damages. I prepared a motion and briefing seeking preclusive effect of the jury's verdict and the district court's findings of fact and conclusions of law, and the court ruled the bellwether trial conclusively established the defendants' liability and causation. I assisted in the preparation of briefing for subsequent appeals. Thereafter, the remaining 126 growers settled each of their claims after a very complex mediation in which I participated. This representation spanned from approximately 2002 to 2011.

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The Honorable Regina M. Rodriguez  
Arraj United States Courthouse  
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Denver, CO 80294  
(303) 335-2170

Reported Decisions:

*Adams v. United States*, 658 F.3d 928 (9th Cir. 2011); 622 F. Supp. 2d 996 (D. Idaho 2009)

10. *Spur Products Corp. v. Stoel Rives*, Idaho State Court, Fourth Judicial District, Ada County (Wilper, J.).

I was lead counsel in this litigation and represented the defendant, a regional law firm, against its former client, which alleged the law firm committed malpractice by demanding the client either become current on its billings or settle its case at mediation. The plaintiff alleged \$6 million in damages. I handled all aspects of this case, including propounding and responding to discovery, briefing and arguing discovery motions, meeting with and preparing expert witnesses, taking and defending depositions, preparing and arguing multiple summary judgment motions, preparing and arguing two appeals, and preparing the case for trial. Ultimately, the defendant prevailed at trial. My representation in this case spanned from approximately 2002 to 2008.

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Primary Opposing Counsel:

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Eagle, ID 83616  
(208) 342-2425

Reported Decisions:

*Spur Products Corp. v. Stoel Rives*, 153 P.3d 1158 (Idaho 2007); 122 P.3d 300 (Idaho 2005).

18. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not

involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

In addition to my involvement in significant litigation, I was actively involved in various aspects of firm administration as a partner at Holland & Hart. For example, I was the hiring partner for the Boise office from 2003 until about 2010. As the hiring partner, I was responsible for the recruitment of associates and non-partner attorneys and the Boise office summer associate program. During this time, I was also a member of the firm's recruitment committee, which oversaw firm-wide hiring of associates and non-partner attorneys and the firm's summer associate program. I participated in the firm's taskforce to evaluate the firm's associate review process and requirements for attaining partnership. During my time at Holland & Hart, I actively mentored numerous litigation and other associates in all aspects of the practice of law, including helping to develop their skills and to support their progress towards partnership.

Later, I became a founding member of a litigation boutique, Andersen Banducci. In forming this law firm, I was responsible for all aspects of the firm's startup including finances, budgeting, staffing, human resources, technology, and business development. After the firm's formation, I remained responsible for all aspects of its management and the day-to-day business operations, including most particularly the human resources function, which involved hiring and managing staff and non-partner attorneys. I continued mentoring junior attorneys to help them in developing their litigation skills and attaining partnership.

Since becoming a judge on the Idaho Court of Appeals, I have continued mentoring junior attorneys, including law clerks and staff attorneys. My goal is to assist them in developing their research, writing, and appellate skills and in becoming independent thinkers with the necessary skills to succeed in the practice of law. Additionally, I have volunteered my time to present to law students at the University of Idaho College of Law about ethical issues and professional development and to participate in mock interviews with students who are preparing to enter into the job market.

Outside of the practice of law, I was a founding member of the Idaho Chapter of the Federal Bar Association. As a committee member, I recruited other members, assisted with organization, scheduled and attended meetings, and kept meeting minutes. Additionally, I was the chair of the nominating committee. Further, until recently, I have been a member of the Idaho Supreme Court's Evidence Rules Advisory Committee, which is charged with updating and revising the Idaho Rules of Evidence. While on this committee, I reviewed proposed revisions, researched numerous issues, and reported to the committee regarding possible revisions. Recently, the Idaho Supreme Court requested that I chair the Civil Jury Instruction Committee for purposes of updating the Idaho's civil jury instructions. I am currently working on recruiting members for the committee.

I have not performed any lobbying activities or registered as a lobbyist.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

None.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

None.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

When my nomination is formally submitted to the Senate, I will file my Financial Disclosure Report and will supplement this Questionnaire with a copy of that Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

No family members or other persons, parties, categories of litigation, or financial arrangements are likely to present potential conflicts of interest for me; I do not anticipate any conflicts.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If confirmed, I would resolve any matters involving actual or potential conflicts of interest by applying 28 U.S.C. § 455, the Code of Conduct for United States Judges, and any other relevant ethical canons or rules.

25. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

My pro bono commitment has included my membership on the Board of Directors from 1996 through 2000 for the Silver Sage Girl Scouts Council, Inc., a non-profit organization governing Girl Scouts in Idaho and parts of Oregon and Nevada. My commitment to this organization included generally giving pro bono legal advice, including on personnel matters and real property issues; interviewing prospective employees; participating in fundraising and other events on a regular basis; and regularly attending emergency, quarterly, and annual meetings. After my term on the Board expired in 2000, I continued to provide pro bono legal advice to Girl Scouts on a regular basis.

From 2007 until 2011, I served as a member of the Law Advisory Council for the University of Idaho, College of Law. The Council assists and advises the dean and other College personnel. As a member of the Council, I assisted in identifying and acquiring financial support for the College, advocated for the College, gave advice on the College's programs, built working relationships within the University, and assisted the College's placement and recruitment programs. I remain an emeritus member.

26. **Selection Process**:

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

On January 14 and 18, 2022, Idaho Senator Mike Crapo's chief of staff contacted me about my interest in the position. On January 25, I spoke to Senator Crapo about that subject. On February 3, Idaho Senator Jim Risch's chief of staff interviewed me; on February 15, both Senators' chiefs of staff interviewed me; and then on February 22, Senators Crapo and Risch interviewed me. On March 17, Senators Crapo and Risch notified me they had submitted my name to the White House for consideration.

On April 22, 2022, I interviewed with attorneys from the White House Counsel's Office, and I have had contact with White House Counsel's Office officials since that date. On April 29, I was notified that my name was being submitted to the Office of Legal Policy at the Department of Justice for vetting. Since May 2, 2022, I have been in contact with officials from the Office of Legal Policy. On January 18, 2023, the President announced his intent to nominate me.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.